IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Prabhu Lal through his Legal Representatives. vs. Seva Ram

S.B. Civil Second Appeal No. 56/1996 against the judgment and decree dated 23.11.1995 passed by the learned Addl. District Judge, Sojat camp Jaitaran in Civil Appeal No. 1/95.

Date of Judgment: April 18, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Ms. Jitendra Chopra for the appellant.
Mr. A.K. Khatri for the respondent.

BY THE COURT:

Heard learned counsel for the parties.

This appeal is against the judgment and decree of the appellate court dated 23.11.1995 by which the plaintiff's appeal against the judgment and decree of the trial court dated 19.12.1994 was dismissed by the first appellate court.

Brief facts of the case are that the appellant-plaintiff-landlord filed the suit for eviction of his tenant-respondent-defendant on the ground that the suit property was let out by him to the defendant on 1.8.1989 on rent of Rs.150/ per month. The suit premises is situated in village where the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 were not applicable. The plaintiff served a

notice under Section 106 of the Transfer of Property Act upon the defendant and in that notice, the plaintiff stated that the plaintiff requires the suit premises for doing the business in the suit premises. The defendant in rely, admitted receipt of the notice and further stated that he also gave reply to the notice of the plaintiff. In the trial court, issues were framed. But it appears that both the courts below proceeded to decide the issue of personal bona fide necessity of the plaintiff, as required to be proved under the provisions of the Act of 1950 for obtaining the decree for eviction of the tenant. Both the courts below held that the plaintiff in fact failed to prove that there is need of the plaintiff for the shop in dispute and the trial court dismissed the suit of the plaintiff and the first appeal too was dismissed. Hence this second appeal.

The second appeal was admitted by this Court after framing the following substantial questions of law:-

> "*(1) Whether in view of the finding recorded by the courts below that the Act NO.17 of 1950 is not applicable to the premises yet for passing a decree for ejectment the question of reasonableness and bona fide necessity of the plaintiff is required to be examined or the plaintiff is entitled to get the decree for ejectment passed in his favour as soon as he is able to prove that the tenancy of the defendant has been terminated by serving a valid notice under Sec.106 of the Transfer of Property Act ?*
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> *(2) Whether keeping books of account by the tenant*

defendant regularly is a condition precedent to prove the oral payment of rent to the plaintiff landlord ?"

The learned counsel for the appellant pointed out that it is admitted case that the suit premises is situated in an area where the tenant is not protected by the provisions of the Rent Control Act, 1950. The plaintiff gave notice terminating the tenancy of the defendant-tenant which was admittedly served upon the defendant-tenant and the defendant-tenant even gave reply to that notice. It is true that in the rent note there is mention that the tenant will hand over vacant possession of the suit premises to the landlord whenever the landlord will be in need of the suit shop. It is also submitted that need of the plaintiff was pleaded by the plaintiff in the plaint and the mere wish of the plaintiff for start of business in the shop for his own business or for his son was the ground for getting decree. It is not necessary that the plaintiff should prove all other ingredients which are required to be proved for obtaining the decree for eviction of the tenant from the suit premises as required under the provisions of the Act of 1950. It is also submitted that the two courts below committed serious error of law in deciding the issue against the plaintiff and in favour of the defendant.

The learned counsel for the respondent submitted that in the rent deed, there is a clear mention that the plaintiff will be entitled to obtain the possession of the suit shop only on happening of event and

that is that in case the suit premises is required for the need of the plaintiff. Mere word of mouth that the plaintiff is in need of the suit premises is not enough. It is submitted that both the courts blow categorically concurrently recorded finding of fact against the plaintiff and the plaintiff failed to prove the need for the shop in dispute. In view of the above, this Court may not interfere in the finding of fact recorded by the two courts below. It is also submitted that the two courts below also considered the oral as well as documentary evidence. Therefore, the two courts below have not committed any error of law in dismissing the suit of the plaintiff.

I considered the submissions of the learned counsel for the parties and perused the record also.

It is admitted case that the suit premises is situated in an area where the tenant has no protection as available under the provisions of the Rent Control Act, 1950, therefore, the tenancy could have been terminated by serving a notice under Section 106 of the Transfer of Property Act which has been done by the landlord. It is true that there is mention in the rent deed that the tenant agreed that whenever the suit shop will be required by the plaintiff, the tenant will handover the vacant possession of the suit premises to the landlord. The language used in the rent deed itself is very clear which clearly says that the tenant undertook to handover vacant possession of the suit property to

the landlord whenever the possession is demanded by the landlord. In this case, the plaintiff pleaded that he needs the suit shop for running the business of his son. For this he stated on oath in his statement before the court below and on that point, the plaintiff has not been cross-examined. The defendant in rebuttal, did not state that the plaintiff is not in need of the suit shop, however, in cross-examination, when the suggestion was given to the defendant that the suit shop is required for the personal need of the plaintiff then only the defendant denied that suggestions. In totality of circumstances, it appears that the two courts below proceeded absolutely wrong by ignoring the relevant provisions of law and that is the Transfer of Property Act. In this case both the conditions have been satisfied by the plaintiff as the plaintiff terminated the lease by serving notice and even if it is held that there was a condition in lease deed of happening of some event then that event also happened and that is that the need of the plaintiff for the suit shop. But in this case in fact, the true construction of the lease suggests only that the tenant undertook that he will handover the vacant possession of the rented premises to the landlord whenever the landlord will demand the possession from the tenant.

In view of the above reasons, the substantial question of law no.1 is decided in favour of the appellant and it is held that the two courts below committed error of law in not decreeing the suit.

In view of the above, there is no need to decide substantial question of law no.2.

Hence the appeal of the appellant is allowed. The judgments and decrees passed by the two courts below dated 23.11.1995 and 19.12.1994 are set aside. The suit of the plaintiff is decreed. The plaintiff shall be entitled to take possession from the defendant of the suit premises. The defendant shall handover the vacant possession of the suit premises to the plaintiff within four months from today.

(**PRAKASH TATIA),J.**

mlt.